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***Via Certified Mail -
Return Receipt Requested***

August 27, 2020

Michael Hicks, Area General Manager
Pick-n-Pull Auto Dismantlers
Windsor Pick-n-Pull, Store #04
10475 Old Redwood Highway
Windsor, CA 95492

Luis Damerell, Regional Environmental Manager
Pick n Pull Auto Dismantlers, LLC
10850 Gold Center Drive, Suite 250
Rancho Cordova, CA 95670

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Hicks and Mr. Damerell;

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, ("CWA" or "the Act") that River Watch alleges are occurring at Pick-n-Pull Auto Dismantlers, Windsor Store #04, ("Facility") located at 10475 Old Redwood Highway in Windsor, California.

Notice is being sent to you as the responsible owners, operators, lessees and/or managers of the Facility and real property. This Notice addresses the violations of the CWA, including violation of the terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Facility indirectly into the Russian River, a navigable water of the United States impaired under CWA § 303(d) for sediment and temperature entirely, and pathogens in certain areas.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES permitting program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the “General Permit”) and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). To discharge storm water lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and are in compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under CWA § 505(a). Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that have occurred and continue to occur at the Facility. Consequently Pick-n-Pull Auto Dismantlers (the “Discharger”) is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the California Toxics Rule (“CTR”) and the North Coast Regional Water Quality Control Board (“RWQCB”) Water Quality Control Plan or “Basin Plan.”

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

- 1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated**

To comply with this requirement, River Watch notices the Discharger of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations

of NPDES Permit No. CAS000001, (the General Permit) relating to services and operations taking place at the Facility including storm water management and disposal operations.

The SWRCB's SMARTs reporting database provides documentation that the Discharger, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on September 29, 1995, and the Facility was assigned Waste Discharger Identification ("WDID") number 1 49I011902.

River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of the Discharger, contends that in the continuing auto dismantling operations taking place at the Facility, the Discharger has failed and is failing to comply with the strict terms and conditions of the General Permit governing storm water discharges.

In addition to the alleged violations of the terms and conditions of the General Permit, River Watch alleges violations of discharge prohibitions contained in the RWQCB's Basin Plan, which are incorporated by reference as part of the compliance obligations imposed on the Facility under the General Permit.

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. The lands in and surrounding the Russian River Watershed produce a harvest of unparalleled bounty drawing acclaim worldwide. Failing to care for this critical environment as alleged in this Notice is a violation not only of law, but an abrogation of the trust we demand of Sonoma County landowners.

Having agreed to its terms, the Discharger has a continuing burden to demonstrate compliance with each applicable provision of the General Permit. River Watch alleges the following actions and inactions as violations of the General Permit:

A. Failure to Sample from Representative Sampling Locations

Under the General Permit, the Discharger is required to comply with all the following:

- i. "Collect and analyze storm water samples from two (2) Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)" (General Permit XI.B.2).

“Except as provided in Section XI.C.4 (Representative Sampling Reduction), samples shall be collected from each drainage area at all discharge locations. The samples must be: a. Representative of storm water associated with industrial activities and any commingled authorized NSWDS.” (General Permit XI.B.4.a.)

The Facility site property is approximately eleven (11) acres in size. (SWPPP section 3.1) The drainage areas for the Site are set out in SWPPP Section 3.3 *SITE PHYSICAL DESCRIPTION*, “A total of two drainage areas have been identified for the Site, the Facility Drainage Area and the Parking Lot Drainage Area. Currently, there is only one industrial discharge point for the entire Site, Outfall #1, which drains treated stormwater runoff from the Facility Drainage Area. The Parking Lot Drainage Area drains the runoff generated within the Parking Area only and does not discharge stormwater that is exposed to industrial Site activities”.

Outfall #1 is located at the southwest corner of the Production Yard at the south end of the detention pond. While the SWPPP states that “General area gradients appear to be contoured to flow into the detention pond at the southwestern corner of the Site.” (SWPPP section 3.3 *SITE PHYSICAL DESCRIPTION* and “Stormwater that does not infiltrate into the permeable areas of the Site is directed toward a series of protected drain inlets, and detention pond before it is discharged offsite...” (SWPPP section 3.3.1 *Facility Drainage Area*), the SWPPP contains no further detailed language supporting the conclusion that this sole sampling location complies with the General Permit’s mandate for representative sampling.

The current SWPPP, which is the latest of 3 revisions, acknowledges that more sampling locations are needed,

“The Site has only one discharge point referred to as Outfall #1. Outfall #1 is located at the southwest corner of the Production Yard at the south end of the detention pond. A Sample Station was installed for ease of sample collection, however it is not currently in use as its ability to collect a representative sample of discharge water quality is in question.”

“Additional samples will be required to be collected from other points of offsite discharge that may be created due to change of operations, other circumstances, or otherwise required to be sampled by the General Permit. This SWPPP will be modified to include additional discharge points and will be included in this MIP as they are identified.” (SWPPP Section 6.2.1 *Sample Location(s)*).

Despite the recognized need for additional sampling locations, the most recently available sampling reports available for the Facility on the SMARTS reporting database subsequent to this latest SWPPP, continue to include only one sampling location- “DP-1”.

B. Failure to Sample for All Pollutants of Concern Identified in the SWPPP

In addition to Oil and Grease, Total Suspended Solids, and Heavy Metals, the Discharger is required to sample for and monitor for “additional parameters identified by the Facility on a facility-specific basis that serve as indicators of the presence of industrial pollutants identified in the pollutant source assessment ...” (General Permit Section XI.B.6.c). In its SWPPP, the Discharger provides a comprehensive list of “*Potential Pollutants*” including copper and zinc and samples for some of these pollutants but not for the discharge of copper and zinc from industrial sources, such as on-site materials containing zinc or copper or transportation-related activities at the Facility, which, if above CTR limits are therefore prohibited as “contamination” or “nuisance” under the General Permit.

C. Failure to Adequately Monitor Discharges from the Detention Pond

The Facility’s Industrial Processes include the use and operation of a stormwater detention pond before stormwater is discharged offsite. Records for the Facility on file with SMARTS reporting database and reviewed by River Watch, demonstrate capacity concerns (see Exceedance Response Action Plan, December 23, 2019, Section 2.2). River Watch contends that Best Management Practices (“BMPs”) for the Facility as set out in SWPPP Section 5.1.2 *Stormwater Structural BMP Maintenance*, are not detailed sufficiently to determine whether the detention pond is lined or unlined, and whether it is sufficient to hold all regulated stormwater prior to evaporation or discharge.

D. Failure to Prepare and Implement an Adequate SWPPP

The General Permit requires the preparation, implementation, review, and update of an adequate SWPPP which must comply with the standards of Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”).

The General Permit requires dischargers to implement BMPs when necessary, to support attainment of water quality standards. The use of BMPs to control or abate the discharge of pollutants is authorized by 40 C.F.R. §122.44(k)(3) because numeric effluent limitations are infeasible, and implementation of BMPs is reasonably necessary to achieve effluent limitations and water quality standards, and to carry out the purposes and intent of the Act. (40 C.F.R. §122.44(k)(4).)

Compliance with the monitoring and reporting program and the requirement to implement effective BMPs is central to an efficacious General Permit program. The General Permit has required all non-exempt facilities to collect and accurately analyze samples from storm events, and implement effective BMPs detailed in the facilities’ SWPPPs that are adequate in reducing or preventing pollutants in storm water discharges and authorized non-storm water discharges.

Discharges from the Facility site contain pollutants which adversely affect the Russian River. River Watch, following review of documents on file with the SWRCB's SMARTs reporting database, contends the Discharger has not fully developed and/or adequately implemented a SWPPP for operations at the Facility as evidenced by the fact that the Discharger has failed to reduce pollutants in storm water to below water quality objectives or standards.

The Facility has a history of exceedance of EPA Benchmarks and Numeric Action Limits for Aluminum, Iron, and Chemical Oxygen Demand. Exceedances for Iron and Aluminum have persisted in recent self-monitoring reports, as confirmed in the 'Notice of 2018-19 Annual NAL Exceedances for NPDES Industrial Stormwater Permit for Stormwater Discharges Associated with Industrial Activity (Order No. 2014-057DWQ; NPDES No. CAS000001)' issued by the North Coast Regional Water Quality Control Board to the Discharger on December, 2, 2019. Said exceedances were acknowledged in the Discharger's Level 1/2 Exceedance Response Action Plan dated December 23, 2019. River Watch contends the proposed BMP improvements in the Exceedance Response Action Plan are generally inadequate and not sufficiently specific to result in a high likelihood of reducing concentration levels in constituents of concern to levels below water quality objectives or standards. For example, the March 2, 2020 sampling result for Iron was 1800 ug/L (1.8 mg/L). Both the NAL and EPA Benchmarks for Iron are 1 mg/L.

The Discharger has been and will continue to be in violation of the Act every day it discharges stormwater containing pollutants as identified in this Notice without adequately implementing its SWPPP and the BMPs required to be incorporated in that SWPPP.

River Watch contends that from August 1, 2015 to the present, the Discharger violated the CWA by discharging pollutants from the Facility to waters of the United States without an individual NPDES permit, and in violation of the General Permit. Furthermore, River Watch contends these violations are continuing. The Discharger will continue to be in violation of the General Permit each day it discharges non-storm water pollutants and contaminated stormwater from the Facility in violation of the General Permit.

River Watch believes the Facility is not operated by the Discharger to ensure that stormwater discharges are properly contained, controlled, and/or monitored. As a result, the Discharger fails to follow the requirements of the General Permit in its sampling protocols by failing to accurately capture "first flush" samples and failing to properly sample from all points of discharge from the Facility.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is Pick-n-Pull Auto Dismantlers, as owner and operator of Pick-n-Pull, Windsor Store #04, as well as those of its employees responsible for compliance with the General Permit.

4. The Location of the Alleged Violation

The location of the various violations of the CWA is the permanent address of the Facility at 10475 Old Redwood Highway in Windsor, California - including the waters of the Russian River –a water of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is August 1, 2015 through the present. This Notice includes all violations which occur after the range of dates covered by this Notice up to the end of trial. Some of the violations are continuous in nature, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving this Notice is California River Watch, an Internal Revenue Code §501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to the undersigned.

REMEDIAL MEASURES REQUESTED

River Watch believes that at a minimum, implementing the requirements of the General Permit as outlined in this Notice is necessary in order to bring the Facility into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, fishing, hiking, photography, nature walks and/or the like. Their health, use, and enjoyment of this natural resource is

specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

The General Permit, in the very first "Standard Condition," states that "Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage" (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that "to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations" (General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$55,800.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the Discharger to contact counsel for River Watch within **20 days** after receipt of this Notice to continue on-going discussions regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Facility is in compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jack Silver", with a stylized flourish at the end.

Jack Silver

JS: lhm

Service List

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
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✓ John W. Busterud, Regional Administrator
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Eileen Sobeck, Executive Director
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